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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13
14 JENNY LISETTE FLORES, et al.,

15 Plaintiffs,

16 v.

17 WILLIAM P. BARR, Attorney General
18 of the United States, et al.,

19 Defendants.
20
21
22
23
24

Case No. 2:85-cv-4544-DMG

**EX PARTE APPLICATION FOR
LEAVE TO FILE BRIEF OF THE
STATES OF CALIFORNIA,
MASSACHUSETTS,
CONNECTICUT, DELAWARE,
DISTRICT OF COLUMBIA,
HAWAII, ILLINOIS, MARYLAND,
MICHIGAN, MINNESOTA, NEW
JERSEY, NEW MEXICO, NEW
YORK, NORTH CAROLINA,
OREGON, PENNSYLVANIA,
RHODE ISLAND, VERMONT,
VIRGINIA, AND WASHINGTON
AS AMICI CURIAE IN SUPPORT
OF PLAINTIFFS' APPLICATION
FOR TEMPORARY
RESTRAINING ORDER**

1 The States of California, Massachusetts, Connecticut, Delaware, District of
 2 Columbia, Hawaii, Illinois, Maryland, Michigan, Minnesota, New Jersey, New
 3 Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island,
 4 Vermont, Virginia, and Washington (Amici States) hereby submit this *ex parte*
 5 application for an order granting leave to participate as amici curiae in support of
 6 Plaintiffs' Application for Temporary Restraining Order. *See* ECF No. 572 (TRO
 7 Application). The proposed brief of amici curiae is attached to this application as
 8 Exhibit A. Amici States recognize that the Court is currently holding the TRO
 9 Application in abeyance. *In Chamber – Order re Pls.' Ex Parte Appl. for a TRO*
 10 *and an Order to Show Cause Why a Prelim. Inj. and Contempt Order Should Not*
 11 *Issue*, No. 2:85-cv-4544-DMG-AGR (C.D. Cal. June 28, 2019), ECF No. 576.
 12 Should the Court rule on the TRO Application, or convert the TRO Application into
 13 a motion for a preliminary injunction under Local Civil Rule 65-1, Amici States
 14 respectfully request that the Court consider this *ex parte* application and proposed
 15 brief.

16 As required by Local Civil Rules L.R. 7-19 and 7-19.1, Amici States contacted
 17 counsel for Plaintiffs and the federal government in order to ascertain the parties'
 18 positions on this application. Plaintiffs and the federal government both consented
 19 to the participation of Amici States.¹

20 The federal government is in clear and undeniable violation of the
 21 longstanding *Flores* Settlement Agreement, which “sets out nationwide policy for
 22 the detention, release, and treatment of minors in the custody” of federal
 23 immigration authorities. (Settlement Agreement at ¶ 9.) Among the many
 24 requirements in the agreement, the federal government must “treat, all minors in its

25 ¹ Amici counsel contacted the following counsel: (1) for Plaintiffs: Peter A.
 26 Schey, Center for Human Rights & Constitutional Law, 256 South Occidental
 27 Boulevard, Los Angeles, CA 90057, Phone: 213-388-8693, Email:
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1 custody with dignity, respect and special concern for their particular vulnerability
 2 as minors” (§ 11), and following apprehension must “hold minors in facilities that
 3 are safe and sanitary.” (§ 12A.) In violation of the *Flores* Settlement Agreement,
 4 the federal government is currently holding children at Customs and Border
 5 Protection (CBP) facilities in the El Paso and Rio Grande Valley Border Patrol
 6 Sectors in deplorable and inhumane conditions without access to adequate food,
 7 water, medical care, or basic hygiene, and in unreasonably cold temperatures where
 8 children are sleep deprived. (See TRO Application.) As the TRO Application
 9 details, children at these facilities are filthy, wearing clothes covered in bodily
 10 fluids, including urine, provided insufficient food, and forced to sleep on cold
 11 concrete floors.² At least 15 children at one facility had the flu, and 10 more were
 12 being held in medical quarantine.³ Children as young as 7 or 8 are being asked to
 13 care for toddlers they just met.⁴

14 The Amici States have a strong interest in ensuring that the federal
 15 government complies with its legal obligations under the *Flores* Settlement
 16 Agreement and protects the well-being of these vulnerable children. The Amici
 17 States welcome a large proportion of immigrant children released from federal
 18 custody.⁵ Once the children are released to sponsors in Amici States, the States will

19 ² Lizzie O’Leary, ‘*Children Were Dirty, They Were Scared, and They Were*
 20 *Hungry*’, The Atlantic (June 25, 2019),
 21 [https://www.theatlantic.com/family/archive/2019/06/child-detention-centers-](https://www.theatlantic.com/family/archive/2019/06/child-detention-centers-immigration-attorney-interview/592540/)
 22 [immigration-attorney-interview/592540/](https://www.theatlantic.com/family/archive/2019/06/child-detention-centers-immigration-attorney-interview/592540/); Isaac Chotiner, *Inside a Texas Building*
 23 *Where The Government Is Holding Immigrant Children*, The New Yorker (June 22,
 24 2019), [https://www.newyorker.com/news/q-and-a/inside-a-texas-building-where-](https://www.newyorker.com/news/q-and-a/inside-a-texas-building-where-the-government-is-holding-immigrant-children)
 25 [the-government-is-holding-immigrant-children](https://www.newyorker.com/news/q-and-a/inside-a-texas-building-where-the-government-is-holding-immigrant-children).

23 ³ Cedar Attanasio et al., *Attorneys: Texas border facility is neglecting*
 24 *migrant kids*, AP News (June 21, 2019),
 25 <https://www.apnews.com/46da2dbe04f54adbb875cfbc06bbc615>.

25 ⁴ Lizzie O’Leary, ‘*Children Were Dirty, They Were Scared, and They Were*
 26 *Hungry*’, *supra* note 2.

26 ⁵ See U.S. Dep’t of Health & Human Services, Office of Refugee
 27 Resettlement, Admin. for Children & Families, *Unaccompanied Alien Children*
 28 *Released to Sponsors By State* (last visited July 9, 2019),
[https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-](https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state)
[sponsors-by-state](https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state).

1 be required to bear the burden of providing medical and mental health services to
2 address the harms caused to these children by the federal government. Most
3 importantly, we cannot allow the federal government to treat children inhumanely.

4 The Court's immediate intervention is necessary to address the federal
5 government's failure to comply with its legal obligations, which at their core are
6 human rights violations. No child should ever be held in the conditions in which
7 the federal government is currently holding immigrant children—conditions that a
8 pediatrician who evaluated some of these children compared to “torture facilities.”
9 (TRO Application at 2.)

10 Not only do the federal government's actions violate the express terms of the
11 *Flores* Settlement Agreement, they also run afoul of the children's due process
12 rights. Conditions similar to those at issue here have raised fundamental due
13 process concerns in the context of adults detained for immigration purposes.
14 *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at
15 *1 (D. Ariz. Nov. 18, 2016), *aff'd sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir.
16 2017). And courts have held that these conditions are unacceptable for adult
17 prisoners. *See, e.g., Foster v. Runnels*, 554 F.3d 807, 812-15 (9th Cir. 2009)
18 (inadequate food violates Eighth Amendment); *Hoptowit v. Spellman*, 753 F.2d
19 779, 783-84 (9th Cir. 1985) (inadequate plumbing and cleaning supplies both
20 produce unhygienic conditions that violate Eighth Amendment); *Martino v. Carey*,
21 563 F. Supp. 984, 999-1002 (D. Or. 1983) (overcrowding and inadequate clothing,
22 sanitation, and heating violate Eighth Amendment).

23 In addition, the federal government's inhumane treatment is causing long-term
24 harm to the children. Experts have repeatedly warned against the detention of
25 immigrant children in conditions that inevitably cause trauma. If the federal
26 government is allowed to continue holding immigrant children in deplorable
27 conditions, the harm to the children could last a lifetime.

28 Accordingly, Amici States respectfully request that this Court grant their *ex*

1 *parte* application for leave to file the proposed brief in support of Plaintiffs’
2 Application for Temporary Restraining Order.

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4 Dated: July 9, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 9, 2019, I electronically filed the foregoing documents and attachments with the Clerk for the United States Court for the Central District of California by using the appellate CM/ECF system. A true and correct copy of this Ex Parte Application has been served via the Court's CM/ECF system on all counsel of record.

Dated: July 9, 2019

/s/ Rebekah A. Fretz

Rebekah A. Fretz